

ARTICLE 12: NONCONFORMING SITUATIONS

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§ 1200 PURPOSE.

A nonconforming situation is a condition that occurs when, on the effective date of adoption of this Code or a previous ordinance or on the effective date of an ordinance text amendment or rezoning, an existing lot, structure, building, sign, development, or use of an existing lot or structure does not conform to 1 or more of the regulations currently applicable to the district in which the lot, structure, building, sign, development, or use is located.

A. Any nonconforming situation which lawfully existed as of the effective date of this Code and which remains nonconforming, and any nonconforming situation which has become nonconforming as a result of the adoption of this Code, or any subsequent amendment to this Code, may be continued or maintained only in accordance with the terms of this article.

B. This Article provides for the regulation of nonconforming lots, structures, buildings, signs, development, and uses. These regulations are designed to protect the rights of legally existing nonconforming lots, structures, buildings, signs, development, and uses, but not promote expansion or enlargement. The lot, structure, building, sign, development, or use will be encouraged to convert to a conforming use in the future in order to preserve the integrity of this Code and the character of the city.

C. The City Council, by resolution, may authorize the acquisition of private property by purchase or condemnation for removal of nonconforming uses and structures.

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§ 1201 NONCONFORMING LOTS.

A nonconforming lot is a lot or parcel, the area or dimensions of which was lawful prior to the adoption, revision or amendment of this Code or Zoning Map or previously applicable zoning ordinances and maps, but which fails, by reason of such adoption or amendment, to conform to the present requirements of the zoning district.

A. Lots that were legally established and in conformance with the applicable zoning ordinance when created shall be eligible for construction and use in accordance with current standards, subject to the following. In any district where single-family dwellings are permitted, the yard requirements (setbacks) applicable in the zoning district shall apply, with the following exception: on substandard width lots, an interior side yard may be reduced by half the lot width shortage provided such reduction does not exceed 25% of the required yard width.

B. If applicable yard requirements (setbacks) cannot reasonably be complied with in accordance with § 1201(A), an administrative waiver or variance, whichever applies, from the applicable setback requirements may be granted based upon the findings of § 405.04 (Administrative Waiver) or § 404.06 (Variances).

C. This section only applies to undeveloped, nonconforming lots or to lots for which new construction is proposed.

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§ 1202 NONCONFORMING DEVELOPMENTS.

Nonconforming developments include buildings, structures, parking, landscaping and other property improvements that were lawfully existing prior to the adoption, revision, or amendment of this Code, or previous ordinance, in which the uses are otherwise in conformance with the district in which they are located, but which fail, by reason of such adoption, revision or amendment, to conform to the development standards applicable to the district. This Code is not intended to and shall not affect the right of nonconforming developments to be used in accordance with the uses permitted in the zoning district in which they are located.

All expansions, modifications, alterations or repairs of existing nonconforming buildings and structures for which the use is otherwise in conformance with the district in which it is located are subject to the following.

A. Any expanded portion of a building or structure shall be in full conformance with the development standards of this Code, except where such conformance is not practical without the entire building or structure fully conforming (such as repainting an entire building to conform to color and light reflectance value requirements) where the provisions of § 1202(C) below, apply.

B. In no case shall any modification, alteration or repair result in an increase in nonconformity with current development standards.

C. If the total, cumulative increase in the floor area is 50% or less for single-family residential or 25% or less for all other uses, or if the total cumulative cost of any exterior modification, alteration or repair is 25% or less of the valuation of the building as determined by the Director in accordance with the International Building Code, then full conformance of the existing portion of the building or structure is not required, except that:

1. Closer conformance to 1 or more of the following development standards is required:

- a. Parking;
- b. Landscaping;
- c. Color/light reflectance value;
- d. Height and massing;

e. Screening requirements;

f. Lighting;

g. Signs;

2. If additional parking is required, per § 912 of this Code, due to a change of use or expansion, such additional parking must be provided.

D. If the total, cumulative increase in the floor area is greater than 50% for single-family residential or greater than 25% for all other uses, or if the total cumulative cost of any exterior modification, alteration or repair is greater than 25% of the valuation of the building as determined by the Director in accordance with the International Building Code, then the entire building or structure and associated parking shall be in full conformance with the development standards of this Code (such as lighting, signage, landscaping, color and the like).
(Am. Ord. 2009-15, passed 10-13-2009)

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§ 1203 NONCONFORMING SIGNS.

A. Continuance. A nonconforming sign lawfully existing at the time of adoption or subsequent amendment of this article may continue, although such sign does not conform to the provisions of this article.

B. Maintenance. Any lawfully existing sign cannot be enlarged, reworded (other than in the case of cinema or theater signs), redesigned or altered in any way including repainting in a different color, except to conform to the requirements of this article; and provided further that any such sign which has deteriorated or is damaged or destroyed to such an extent that the cost of restoration would exceed 25% of the replacement cost, can only be repaired or rebuilt or altered to conform.

C. Replacement. Any sign replacing a nonconforming sign shall conform with the provisions of this article, and the nonconforming sign shall no longer be displayed. However, any non-conforming sign lawfully existing at the time of adoption or subsequent amendments to this article, advertising multiple businesses may continue to exist as long as the sign structure itself is not redesigned, enlarged or altered, although the copy text for an individual business on a multiple tenant sign may periodically change.

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§ 1204 NONCONFORMING USES.

A nonconforming use is a use or activity which was lawful prior to the adoption, revision, or amendment of this Code and Zoning Map, or previously applicable zoning ordinances and maps, but which is unlawful by the use regulations currently applicable to the zoning district in which the use or activity is located. A nonconforming use may include physical improvements such as buildings, structures, parking, signs or other development. A legal nonconforming use may continue only in the manner and to the extent that it existed at the time of such enactment, amendment, or annexation, subject to the following provisions.

1204.01 Expansion of Nonconforming Uses. No expansion shall be made of any nonconforming use unless such expansion conforms to the regulations specified for the district in which it is located. In cases where the nonconforming use occupies a building, structure, or any portion of a site, expanding the use into an additional building or land area is prohibited.

1204.02 Abandonment, Discontinuance, Damage, Destruction and Reconstruction of Nonconforming Uses.

A. No nonconforming building, structure or use which ceases to be used for a period exceeding 6 months or is superseded by a conforming use, shall again be devoted to the nonconforming use except as otherwise provided in § 1204.02(B).

B. Any building or structure or 1 or more of a group of buildings or structures related to 1 nonconforming use, and under 1 ownership, which has been damaged by fire, flood, explosion, earthquake, war, riot, or act of God, may be reconstructed pursuant to § 1202 and used as before, if done within 12 months of such calamity. Where provisions of this article are in conflict with county flood control requirements, the more restrictive provisions shall apply.

C. Within nonconforming mobile home parks, mobile and manufactured homes may be replaced subject to the following:

1. Replacement of damaged or destroyed mobile homes shall be subject to the provisions of § 1204.02(B);

2. The total number of spaces in the mobile home park shall not be increased over the number existing at the time the park became nonconforming;

3. Mobile and manufactured homes shall maintain a minimum 10-foot setback from the perimeter of the park;

4. There shall be a minimum 10-foot spacing between each mobile and manufactured home;

5. Mobile and manufactured homes shall not be replaced with recreational vehicles;

6. Within mobile home parks, existing recreational vehicles used for residential purposes may be replaced only with manufactured or mobile homes and shall not be replaced with recreational vehicles.

D. The Planning and Zoning Commission may grant a reasonable extension of time for reconstruction if it is determined that a delay in reconstruction was caused by unforeseen circumstances beyond the control of the owner of the premise(s).

1204.03 Repair, Maintenance and Remodeling of Nonconforming Uses. Minor repairs and routine maintenance of property where nonconforming uses exist are permitted and encouraged provided that no structural alterations are made to buildings and structures unless required by ordinance or law, or permitted under the other provisions of this Code. Exterior remodeling of buildings and structures is also encouraged if the remodeling brings the building or structure into closer compliance with current development standards.

1204.04 Change in Use of Property Where a Nonconforming Use Exists.

A. A nonconforming use shall not be changed to a different nonconforming use. This shall not prevent a name change or change in ownership of the same nonconforming use.

B. If a change in use is from an impermissible to a permissible use, but full conformance with current standards cannot be achieved, then the change may be allowed subject to the Board of Adjustment or Director granting a variance or administrative waiver, as applicable. In addition to other findings required for a variance or administrative waiver, as applicable, the Board or Director must find that: compliance is not reasonably possible if compliance cannot be achieved without the addition of land or without moving a substantial structure that is on a permanent foundation. Financial hardship related to such requirements as paving a parking lot, may not constitute grounds for granting a variance/waiver.

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